

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 323 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GALBAJI MANAJI KHANT

Versus

STATE OF GUJARAT

Appearance:

MR AM RAVAL for Petitioner
MR DP JOSHI,APP for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE K.R.VYAS

Date of decision: 29/06/1999

ORAL JUDGEMENT

1. The appellant in this appeal has challenged the judgment and order dated 24.1.1992 passed in Sessions Case No. 21 of 1991 by the learned Addl.Sessions Judge, Sabarkantha at Himatnagar, convicting the appellant for offence punishable under section 304 Part 2 of IPC and

sentencing him to suffer R.I. for 8 years and to pay a fine of Rs. 500/-, in default, to undergo S.I. for one month and also convicting the appellant for offence punishable under section 325 of IPC and sentencing to suffer S.I. for 6 months and to pay a fine of Rs. 200/-, in default, to undergo further S.I. for 10 days. The appellant has been convicted for the incident dated 19.11.1990 when the appellant gave fist and kick blows to Ramanbhai Bhembhai, PW 3, Ex.10, who came to prevent the cattles entering the field and damaging the crops of the appellant and later on when the brothers of Ramanbhai went to the house of the appellant for scolding him, the appellant pelted stones hitting Goraji, who died instantaneously. Even though the appellant was tried for an offence punishable under section 302 of IPC for committing murder of Goraji and also under section 325 and 504 of IPC for causing injuries to Ramanbhai, the learned Addl. Sessions Judge, at the end of the trial, convicted the appellant for offences punishable under sections 304 Part 2 and 325 of IPC.

2. Kalaji Bhemaji, PW 1, Ex. 7 is the complainant who has filed the complaint at Ex. 8 on the next day of the incident. He has stated in his evidence that he is the youngest of the seven brothers and deceased Goraji and injured Raman are also his brothers. All the brothers as well as their parents are residing at village Satarda. On the day of the incident, their goats had entered the field of the appellant. His brother Raman was trying to remove the cattles from the field of the appellant. The appellant thereupon had beaten his brother Raman with stick. As he was in the nearest field, on hearing the scream of his brother, he and his brother Goraji rushed to rescue their brother. On being informed about the beating of Raman, both had gone to the house of the appellant to scold him. The appellant who came out of the house, threw a stone towards Goraji. The stone hit on the back portion of head of Goraji as a result of which Goraji fell down. He thereafter shouted for help and his wife Shanta, wife of Goraji Shakriben, PW 6 and his two brothers Ramesh, PW 7 and Babaji, PW 2 came there. All removed Goraji from the said place to their house. According to the complainant, Ramesh and Babaji thereafter scolded the appellant. Ramesh thereafter went to village Satarda to call the doctor. The doctor, after examining Goraji, declared him dead. The complainant, in his evidence, has tried to explain the delay in filing the complaint by pointing out circumstances. Since it is not material, it is not necessary to deal with the same. In the cross examination, the complainant has stated that the incident happened at about 12.30 p.m. According to

the complainant, when he heard the scream of his brother Raman, he as well as his brother deceased Goraji who were in their field, also known as Mahudawada field which is at a distance of about 2' to 3' from the house of the accused, rushed to rescue Raman. According to the complainant, his brother Raman met them in the field of the appellant. He has denied the suggestion that he had gone to the house of the appellant with his other brothers, namely Ramesh, Babaji and Goraji. He has also denied the suggestion that Ramesh and Babaji were having sticks with them. He has also denied the suggestion that Babaji had inflicted blows on the head as well as on the hand of Galbaji and because of the same, blood was oozing out of the head and hand was fractured. He has also denied the suggestion that he and Ramesh inflicted blows on the head of the wife of Galbaji. He has also denied the fact that with a view to save himself, Galbaji pelted stones on them. He has admitted that Galbaji filed criminal case against him as well as Babaji, Ramesh and Goraji. However, according to him, it was a false case. He has admitted that with respect to the said complaint, the police had arrested him as well as Ramesh and Babaji.

3. The prosecution has also examined Babaji, PW 2 Ex. 9, Raman, PW 3 Ex.10, one Masiben Damabhai, PW 5 Ex.12, Sakriben Goraji, PW 6 Ex.14, Ramesh Bhemaji, PW 7 Ex.15, brother of the complainant to prove the charges against the appellant. We have gone through their testimony. Reading the same, it is clear that they have, by corroborating the evidence of the complainant, supported the prosecution. It is to be noted that they are closely related to the deceased and, therefore, their evidence is required to be closely scrutinised. Having done so, it appears to us that an attempt has been made to suppress the genesis of the incident. It is the consistent say of the prosecution witnesses that only Kalaji, the complainant and Goraji, the deceased had gone to the appellant for the purpose of scolding him after they came to know that their brother Raman was beaten. It is, therefore, their say that the other prosecution witnesses came afterwards no sooner Goraji was hit with the stone pelted by the appellant and it is only thereafter that there was some scuffle between the appellant on one side and Babaji, PW 2 and Ramesh, PW 7 on the other side. Now, the appellant, by Ex. 47 has filed an additional reply wherein he has specifically stated that on the day of the incident, the complainant as well as his three brothers, namely Babaji, Ramanji and Goraji had come to his house armed with sticks and attacked him with the result that he sustained injuries on hand as well as on head and other parts of the body.

His wife, while trying to intervene, also sustained serious injuries. The appellant, with a view to save himself, pelted three or four stones and it is quite possible that one of them might have hit the deceased. The appellant and his wife were taken to the hospital and were treated for quite some time. It is further stated that a false case has been filed against him. He has produced the medical certificate showing the injuries caused to him and his wife. In substance, the appellant has taken a specific plea of private defence. Ex. 10 is the medical case paper of the appellant. Ex. 11 and 13 are the medical certificates issued by the Medical Officer, Primary Health Centre, Malpur, of the appellant as well as his wife respectively. Having gone through the medical certificate Ex. 11, it is clear that the appellant had sustained as many as seven injuries out of which three were on parietal region and the left hand was fractured. Similarly, Ex. 13 reveals that the wife of the appellant sustained three injuries, one of them being CLW on the right eye brow. The appellant had to remain indoor patient in the hospital for 17 days while his wife remained in the hospital for 1 day. In substance, the appellant and his wife sustained serious injuries on their persons. As stated above, the prosecution witnesses have tried to suppress the genesis of the offence and have not explained the injuries sustained by the accused.

4. The Supreme Court, in the case of Lakshmi Singh Vs. State of Bihar, AIR 1976 SC 2263 has held as under:-

"In a murder case, the non-explanation of the injuries sustained by the accused at about the time of occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inference:-

- (1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version.
- (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable.
- (3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw

doubt on the prosecution case."

5. Having considered the evidence of prosecution witnesses, we are clearly of the view that the omission on the part of the prosecution to explain the injuries on the person of the accused assumes much grater importance when the evidence consists of interested or inimical witnesses, especially when in the present case, the defence has given a version which competes in probability with that of the prosecution. Right from the first incident, when the goats belonging to the complainant entered the field of the appellant and were damaging the crops, the appellant was justified in protecting his field and was further justified in using some force and accordingly, Raman, the brother of the complainant was beaten by stick. Even though the prosecution witnesses have tried to come out with a case that only two brothers, namely Kalaji and Goraji had gone to the house of the appellant with a view to scold him, the defence put forward by the appellant appears to be more probable when he states that four brothers had come with sticks with a view to take the revenge. The fact that the appellant and his wife sustained serious injuries, with a view to save himself and his wife, he pelted three to four stones and one of them hit the deceased, resulting into his death. These circumstances, in our opinion, are sufficient to hold that the defence of the appellant appears to be quite probable justifying him to use reasonable force in his self defence. The learned Sessions Judge, in our opinion, has misdirected himself in not appreciating the defence put forward by the appellant. One of the grounds given by the learned Sessions Judge is that the appellant could have remained in the house by closing the doors to protect himself, is not acceptable to us. It is very difficult to predict as to how a man, placed in a given circumstance, would behave. There cann't be fixed norms. As far as the case on hand is concerned, it is to be appreciated that the appellant was all alone and facing a strong opposition from the four brothers armed with weapons. The appellant has not used any lethal weapon and has merely pelted stones with a view to save himself and his wife. It might be the sheer accident, though unfortunate, that the deceased was hit by a stone. These are the circumstances in favour of the appellant while considering his appeal challenging the conviction. Having considered these circumstances, in our opinion, the prosecution has failed to make out any case against the appellant, especially when he has exercised the right of private defence within the meaning of section 96 of IPC.

6. In the result, the appeal is allowed. The judgment and order of conviction and sentence passed in Sessions Case No. 21 of 1991 by the learned Addl. Sessions Judge, Sabarkantha at Himatnagar is set aside. The appellant is acquitted qua the offences for which he is charged. The bail-bonds shall stand cancelled. The fine, if paid, to be refunded to the appellant.

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